

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA * **CRIMINAL DKT. NO. 09-CR-145**

v. * **SECTION: N(1)**

BARTHOLOMEW FRANK PALMISANO, JR. * **VIOLATIONS:**
a/k/a BART PALMISANO, JR. * **15 U.S.C. § 78m(b)(2)(A)**
* **15 U.S.C. § 78m(b)(2)(B)**
* **15 U.S.C. § 78m(b)(5)**
* **15 U.S.C. § 78ff**
* **17 C.F.R. § 240.13b2-1**
* **17 C.F.R. § 240.13b2-2**
* **18 U.S.C. § 2**

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FACTUAL BASIS

The Defendant, **BARTHOLOMEW FRANK PALMISANO, JR., a/k/a BART PALMISANO, JR.** (“**PALMISANO, JR.**” or the “defendant”) has agreed to plead guilty as charged to the pending Bill of Information in the above-captioned case charging him with one count of false statements to accountants and auditors of a publicly-traded company, in violation of 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(2)(B), 17 C.F.R. § 240.13b2-2, 15 U.S.C. § 78ff, and 18 U.S.C. § 2; and one count of falsifying books and records of a publicly-traded company, in violation of 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(2)(B), 78m(b)(5), 17 C.F.R. § 240.13b2-1, 15 U.S.C. § 78ff, and 18 U.S.C. § 2. Should this matter have gone to trial, the Government would have proven, through the introduction of competent testimony and admissible, tangible exhibits, the following facts, beyond a reasonable doubt, to support the allegations in the Bill of Information now pending against **BARTHOLOMEW FRANK PALMISANO, JR.:**

Documentary and testimonial evidence would be introduced to prove that Orthodontic Centers of America, Inc., which subsequently changed its name to OCA, Inc., (“OCA” or the “Company”) was a Delaware corporation with its headquarters in Metairie, Louisiana, in the Eastern District of Louisiana. OCA was primarily engaged in the business of providing business services to “affiliated” (or partnered) orthodontic or pediatric dental practices, such as providing or lending capital to open new practices; proprietary business, management information, and clinical systems for medical, billing, operational, and accounting needs; and advertising and marketing planning to generate new patients. In 2006, the Company provided business services to approximately 300 affiliated orthodontic and pediatric dental practices throughout the United States and parts of Japan, Mexico, Spain, and Puerto Rico.

Evidence would be introduced to prove that OCA was founded in or about 1985 and, in 1994, the Company completed an initial public offering. From 1994 through in or about 2007, OCA was a publicly-traded company. The Company was listed on the New York Stock Exchange from in or about 1997 through 2006 and its stock was traded under the ticker symbol “OCA.” Documentary evidence would be introduced to prove that, as a publicly-traded company whose shares were registered pursuant to Section 12 of the Securities and Exchange Act of 1934 (15 U.S.C. § 78l), OCA was required to comply with regulations of, among others, the United States Securities and Exchange Commission (“SEC”), which regulations, in connection with the federal securities laws, were designed to ensure that the financial information of publicly traded companies was accurately recorded and disclosed to the investing public. Under SEC regulations, OCA and its officers had a duty to make and keep books, records, and accounts that fairly and accurately reflected the Company’s business transactions; to devise and maintain a

system of internal accounting controls that provided reasonable assurances that the Company's financial transactions were recorded in a manner that would permit the preparation of financial statements in conformance with Generally Accepted Accounting Principles ("GAAP"); and to file with the SEC, among others, Forms 10-K (annual financial statements audited by independent accounts) and 10-Q (quarterly updates of its financial statements that reliably and truthfully disclosed its financial condition and the results of its business operations).

Moreover, documentary and testimonial evidence would be admitted to prove that, as a publicly-traded company, OCA was required to retain independent auditors and accountants for several different functions, including to review, audit, and test its financial statements for compliance with appropriate accounting rules; to review, audit, and test its internal controls to ensure compliance with appropriate accounting rules; and, beginning in 2004, to assist the Company's officers in, among other things, certifying the correctness of OCA's financial statements, pursuant to the relevant provisions of the Sarbanes-Oxley Act of 2002 ("SOX").

Documentary and testimonial evidence, including records from the Company's human resources department, would be introduced to prove that the defendant, **PALMISANO, JR.**, a resident of Metairie, Louisiana, in the Eastern District of Louisiana, served as OCA's Chief Financial Officer ("CFO") from 1998 through approximately mid-2001. From approximately mid-2001 until June 2005, the defendant served as the Company's Chief Operating Officer. Prior to his time as the Company's CFO, **PALMISANO, JR.**, served as the Company's Chief Information Officer. Beginning in June 2005, as a result of the conduct described below, the defendant, **PALMISANO, JR.**, was placed on paid administrative leave until his formal resignation in or about March 2006. In or about 1998, at the beginning of the defendant's tenure

as the Company's CFO, **PALMISANO, JR.** was earning an annual salary of approximately \$86,000, which had increased to approximately \$225,000 annually at the time of his resignation in March 2006. At all times in his various roles, **PALMISANO, JR.** reported to Bartholomew Frank Palmisano, Sr. ("Bart Palmisano, Sr."), the Company's then-President, CEO, and Chairman.

Similarly admissible evidence would be admitted to prove that Bart Palmisano, Sr. is a resident of New Orleans, Louisiana, and served as OCA's Chairman and Chief Executive Officer beginning in July 2000, and as President beginning in October 1999, through May 2006, when he resigned these positions. Bart Palmisano, Sr. was the co-founder of OCA and had previously served as Co-CEO from September 1998 through July 2000. He also served as a Director of the Company from its inception until 2006. Documentary and testimonial evidence would be admitted to prove that Bart Palmisano, Sr. is a lawyer and had in the past held a license as a certified public accountant.

Records from OCA's human resources department, as well as testimonial evidence, would be introduced to prove that Jose Paz was an OCA employee who was hired on or about July 15, 1993, and assisted in information technology-related functions, including the conversion of various types of software utilized the Company. He also prepared and made the Company's estimated tax payments. Jose Paz's employment at OCA terminated on his death in mid-September 2003.

Documentary and testimonial evidence would be admitted to prove that Joey Richard is a member of a Louisiana-based accounting firm and was retained by OCA in approximately 2004 to assist the Company in making filings and certifications required under federal securities law.

Specifically, Joey Richard was assisting the Company in testing and assessing its internal controls in connection with certifications required to be filed with the SEC under the Sarbanes-Oxley Act of 2002. In connection with this engagement, Joey Richard also investigated suspicious accounting entries he uncovered, as set forth below.

Similarly, documentary and testimonial evidence would be introduced to prove that Don Moody was an attorney in private practice who represented OCA in various securities law and other legal matters for approximately 11 years, from June 1994 through July 2005. Don Moody assisted the Company in preparing filings required by federal law with the SEC, as well as responding to various SEC inquiries and document requests.

Documentary evidence, including publicly-filed documents, financial analyst reports, and stock price charts, as well as testimonial evidence, would be introduced to prove that, at the time of its founding, OCA was a small company with only a few orthodontic practice affiliations but by 2004, OCA provided business services to over 300 affiliated orthodontic practices in 43 states, Japan, Mexico, Puerto Rico, and Spain.

Documentary and testimonial evidence would be admitted to prove that in general, OCA would, on an annual basis, record hundreds of thousands of journal entries, reflecting legitimate financial transactions with its affiliated orthodontists. These transactions would, among other things, reflect the expenditure of Company funds for fixed assets (such as office furniture, equipment, etc.) purchased by OCA for the affiliated orthodontist for his/her practice, and reflect the purchase of intangible assets (identifiable, non-physical assets) by the Company, such as the expenditure of OCA funds to acquire the business affiliation with the particular orthodontist. In general, a typical and proper transaction for the purchase of fixed or intangible assets would

reflect a debit to Company assets (reflecting the purchase of the asset) and a credit in Company liabilities.

Documentary evidence, including OCA's internal accounting books and records, as well as testimonial evidence from Company accounting personnel, auditors, and accountants, would be admitted to prove that, from in or about 1998, through in or about 2001, the defendant, **PALMISANO, JR.**, then the CFO of OCA, booked over a dozen journal entries into OCA's accounting system (which was named "Platinum") which credited (increased) revenue and debited (increased) assets. The journal entries entered by the defendant increased the Company's revenues by tens of millions of dollars. For example, for 2001 alone, these journal entries entered by the defendant increased the Company's revenue by over \$20 million. Under GAAP, these entries were suspicious because they increased revenues while simultaneously increasing assets. As noted above, in a typical transaction, an increase in Company assets generally should correspond to an increase in Company liabilities (reflecting that the Company must expend funds at a later date for the asset).

Documentary and testimonial evidence would be introduced to prove that, in or about 2005, Joey Richard and other accountants retained by OCA began to uncover these suspicious journal entries and began making inquiries as to the basis of the entries originally booked by **PALMISANO, JR.** in 2001. In response, as set forth below, the defendant, **PALMISANO, JR.**, concocted a false and fictitious story to explain these journal entries and manipulated the Company's accounting systems in an effort to mislead OCA's accountants (including Joey Richard), auditors, and management.

Specifically, testimonial evidence would be admitted to prove that, on or about May 13,

2005, Joey Richard, who analyzed the suspicious journal entries booked by the defendant in 2001, met with Bart Palmisano, Sr., the Company's CEO, informed him of these unusual entries and requested an explanation for these entries. On or about May 13, 2005, after being informed that the Joey Richard had questions concerning these journal entries, **PALMISANO, JR.**, concocted a false story to support these journal entries. The defendant's false story, which he knew would be (and was ultimately) relayed to Joey Richard, was that (1) the entries in question were booked by Jose Paz; (2) the Company was aware that the entries were wrong at the time of their booking; and (3) as CFO, the defendant had instructed Jose Paz, who had died years earlier, to enter "reversing entries" to reverse out the revenue wrongly credited by these entries.

Documentary and testimonial evidence would be introduced to prove that on or about this same date (May 13, 2005), the defendant, **PALMISANO, JR.**, created a memorandum entitled "Fixed Assets Memo" which provided a false explanation for these underlying journal entries to support his story. This "Fixed Assets Memo" was provided by the defendant to Bart Palmisano, Sr., who provided it to Joey Richard. Specifically, this memorandum would be admitted into evidence, which falsely explained the journal entries had "inadvertently credited revenue" and that, once these entries were discovered (at the time of their booking), a "reversal was immediately made" to reverse these entries. The defendant's memo also falsely stated that the "reversing" entries had been "suppressed" in OCA's accounting system but, so that the accountants (including Joey Richard) could verify this story, the suppression of these "reversing" entries would be lifted on or about May 13, 2005.

Documentary and testimonial evidence would further be introduced to prove that on or about May 13, 2005, the defendant, **PALMISANO, JR.**, informed Bart Palmisano, Sr., the

Company's CEO, that he had a memo to Jose Paz, dated in October 2001, supporting his phony story. The memo purported to explain the errors in the original journal entries and requested that Jose Paz make reversing entries. On May 13, 2005, **PALMISANO, JR.** provided this memorandum to Bart Palmisano, Sr. as support for his "reversing entries" story to be provided to Joey Richard. In reality, evidence would be admitted to prove that although this memo to Jose Paz was dated in October 2001, it was created by the defendant on or about May 13, 2005.

Additionally, documentary evidence, including OCA's internal accounting books and records, as well as testimonial evidence from witnesses, including Company personnel, auditors, and accountants, would be introduced to prove that on or about May 13, 2005, the defendant, **PALMISANO, JR.**, accessed the Company's accounting system and manipulated accounting data to support his false "reversing entries" story. Specifically, on or about that date, the defendant manipulated seven journal entries booked in 2001 originally identified by Joey Richard as suspicious by changing the user ID for these journal entries from "bpalmisano," which was the user ID assigned to the defendant to "jpaz," which was the user ID assigned to Jose Paz.

Furthermore, this same documentary and testimonial evidence would be introduced to prove that, on or about May 13, 2005, the defendant, **PALMISANO, JR.**, accessed the Company's accounting system and changed five different journal entries, unrelated to the seven journal entries originally identified by Joey Richard as suspicious. Defendant **PALMISANO, JR.** changed the amounts, the original user ID's, and in some cases, the years in which these journal entries were originally booked, to make them appear to be "reversing entries" entered by Jose Paz, which purportedly "reversed" the revenue amounts contained in the original seven journal entries booked in 2001, as set forth in the chart below:

Journal Entry No.	Date Applied	Effect on Revenue	Username
JE26135	9/30/2001	\$0	ttabor
JE32674	1/31/2002	\$0	tzeringue
JE51551	9/30/2001	-\$4,631,415	bpalmisano
JE51552	9/30/2001	\$0	bpalmisano
JE2442	7/31/1999	\$0	gpalmisano
CHANGED TO:			
JE26135	9/30/2001	-\$787,339.07	jpaz
JE32674	9/30/2001	-\$7,508,449.57	jpaz
JE51551	9/30/2001	-\$8,008,237.18	jpaz
JE51552	9/30/2001	\$0	jpaz
JE2442	9/30/2001	-\$13,081,902.18	jpaz

Documentary and testimonial evidence would be admitted to prove that, on or about May 13, 2005, **PALMISANO, JR.** created a document on his computer entitled “cheat sheet,” which reflected some of the changes he made in OCA’s accounting system to purportedly “reverse” out the original, underlying journal entries, as set forth above. Furthermore, on or about May 16, 2005, the defendant sent an e-mail to Bart Palmisano, Sr. and another OCA accounting employee providing a false explanation for these entries and specifically referenced Joey Richard, who was in the midst of attempting to verify the defendant’s phony story as to these journal entries. In the e-mail, **PALMISANO, JR.**, falsely stated that, “I believe it is currently impossible to backdate entries, especially back to 2001. I personally do not have access to enter any type of journal entry...” **PALMISANO, JR.’s** e-mail also falsely stated “[t]he entries in question were made by Jose.” On or about this same date, May 16, 2005, Joey Richard received the defendant’s e-mail, which was forwarded to him by Bart Palmisano, Sr.

Testimonial and documentary evidence would be admitted to prove that, on or about May 31, 2005, the defendant met with Bart Palmisano, Sr., the Company's CEO, Chairman, and President, and confessed to manipulating OCA's accounting data to support his false "reversing entries" story, as noted above. Specifically, the defendant confessed to (1) creating false, back-dated entries to make it appear that the earlier, suspicious journal entries had been reversed in 2001; (2) creating false, back-dated memoranda to support his story that these earlier journal entries had been reversed in 2001; and (3) manipulating the user ID's and amounts of certain journal entries to support his phony story.

Testimonial evidence would also be introduced to prove that, on or about May 31, 2005, the defendant and Bart Palmisano, Sr. contacted Don Moody, the Company's securities counsel, and the defendant confessed to (1) knowing that there were suspicious revenue entries in OCA's accounting system for the fiscal year 2001; (2) knowing that these journal entries remained in the Company's books at the time Joey Richard began reviewing and investigating them; and (3) creating false, back-dated entries to make it appear that the earlier, suspicious entries had been reversed in 2001.

Testimonial evidence would further be introduced to prove that the defendant's confession of manipulating OCA's accounting data was relayed by Don Moody to certain members of OCA's Board of Directors, which immediately formed a Special Committee to formally investigate the journal entries and the defendant's manipulation of accounting data. At that time, OCA placed the defendant on administrative leave.

Documentary and testimonial evidence would be introduced to prove that, partially as a result of **PALMISANO, JR.**'s manipulation of data, on or about June 7, 2005, the Company

filed a Form 8-K with the SEC in which it disclosed, among other things, the existence of the Special Committee, the fact that the defendant had been placed on administrative leave, the possibility of erroneous accounting entries, and the manipulation of data in response to inquiries posed by Company auditors and employees.

Documentary and testimonial evidence would be admitted into evidence to prove that, in the immediate aftermath of the defendant's actions, and as a direct result of his conduct, including his false statements to the accountants and auditors and his falsification of the Company's books and records, OCA hired several professional firms, including forensic accountants and attorneys, to investigate the defendant's actions. Among other things, these firms imaged all relevant Company computers and captured relevant electronic data; began the process of interviewing relevant witnesses relating to the defendant's conduct; began reviewing the Company's accounting data; and researched and advised OCA on the financial and business impact of the defendant's actions. As a direct result of the defendant's conduct, the Company expended approximately \$325,170.30 in fees to these professionals to undertake the tasks noted above.

Subsequently, in or about February 2006, because OCA was unable to file any quarterly or annual financial statements since 2004 with the SEC, the Company's shares were delisted from the New York Stock Exchange. In addition, on or about March 14, 2006, OCA and its various subsidiaries filed voluntary petitions for bankruptcy under Chapter 11 of the United States Bankruptcy Code. Evidence, including corporate documents and witness testimony, would be admitted to prove that, in or about January 2007, OCA's successor company emerged from bankruptcy with new management and is currently operating.

False Statements to Accountants Charge

As noted above, evidence, including documentary evidence and witness testimony, would be admitted to prove that, on or about May 16, 2005, in the Eastern District of Louisiana and elsewhere, the defendant, **PALMISANO, JR.**, knowingly and willfully created and sent an e-mail to, among others, Bart Palmisano, Sr., containing materially false and misleading statements, and omitting to state material facts necessary to make the statements made not misleading. Evidence would be admitted to prove that **PALMISANO, JR.** knew that Bart Palmisano, Sr. would forward this e-mail containing material misrepresentations and omissions to Joey Richard to assist him in his audit, review, testing, and examination of the Company's financial statements, including the above-noted journal entries, and the preparation or filing of documents or reports required to be filed with the SEC under federal law. The May 16, 2005 e-mail created and sent by the defendant would itself be introduced into evidence to prove the material misrepresentations and omissions made and caused to be made by the defendant to Joey Richard, including but not limited to his statements that (a) it is impossible to backdate accounting entries into the Company's accounting databases; (b) **PALMISANO, JR.** did not have access to enter any type of journal entries; and (c) the journal entries under investigation by OCA's accountants (including Joey Richard) were made by Jose Paz.

False Books and Records Charge

Additionally, as noted above, evidence, including documentary evidence, such as OCA's internal accounting books and records, and testimonial evidence from witnesses, including Company personnel and auditors, lawyers, accountants, and other OCA consultants, would be

admitted to prove that, from on or about May 13, 2005, through on or about June 7, 2005, in the Eastern District of Louisiana, the defendant, **PALMISANO, JR.**, did unlawfully, knowingly, and willfully, directly and indirectly, falsify and cause to be falsified, books, records, and accounts of OCA, an issuer with a class of securities registered pursuant to Section 78l, and required to file reports pursuant to Section 78o(d), of Title 15 of the United States Code. Specifically, evidence would be introduced to prove that **PALMISANO, JR.**, directly and indirectly, knowingly falsified and caused to be falsified the internal books and records of OCA, including but not limited to, records in the Company's Platinum database (listing and reflecting accounting transactions, including the journal entry transactions noted above) and its general ledger by, among other means, accessing the Company's Platinum software, selecting particular journal entries booked in 2001 and other years, and: (a) manipulating the user ID's reflected for particular journal entries; (b) manipulating the years in which some of the journal entries were booked; and (c) manipulating the amounts of some of the journal entries, all in an effort to make it appear as if certain journal entries, manipulated by the defendant, reversed the journal entries originally identified as suspicious by Joey Richard.

Testimony corroborating the facts as set forth above, specifically with respect to the above-noted journal entries, the amounts expended by the Company in response to the defendant's actions, OCA's accounting functions and controls, and the defendant's criminal acts, would be introduced through Company personnel, including but not limited to members of OCA's former and current management, accounting department, and Board of Directors. Testimony from professionals and consultants, including attorneys, auditors, accountants, and other professional consultants, engaged by OCA would also be introduced to corroborate the

facts as set forth above. Additional witness testimony, from special agents of the Federal Bureau of Investigation and orthodontists who were the subject of the transactions reflected in the above-noted suspicious journal entries, would be introduced to further corroborate the facts as noted above. Documents, including OCA's internal accounting books and records; reports, notes, memoranda, invoices, and workpapers from OCA's auditors, accountants, attorneys, and consultants; reports, workpapers, invoices, and memoranda from Company personnel and consultants hired to investigate the defendant's actions; and other relevant records would be also admitted into evidence to corroborate the facts as stated above.

In summary, the evidence introduced by the Government at trial would prove, and the defendant concedes, that **PALMISANO, JR.** knowingly lied to an OCA accountant (Joey Richard), who was analyzing and testing OCA's internal controls and assisting OCA's management in preparing and filing documents, certifications, and reports, required to be filed with the SEC under federal securities law, relating to his phony "reversing entries" story as set forth above. Additionally, the evidence introduced by the Government at trial would prove, and the defendant concedes, that **PALMISANO, JR.** knowingly manipulated and falsified OCA's accounting systems, books, and records, with respect to the journal entries noted above, which created false books and records at the Company.

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Date

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Assistant United States Attorney
Texas Bar No. 24045650

Date

BARTHOLOMEW FRANK PALMISANO, JR.
Defendant

Date

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Date